



# Access to immigration legal aid in 2023: An ocean of unmet need

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**Haringey Migrant Support Centre** ('HMSC') is a charity which aims to identify and improve the legal position and personal well-being of migrants. HMSC runs weekly services for migrants, regardless of background, providing free advice and casework on immigration, welfare, housing and community care.

HMSC have become increasingly concerned over the past two years about the difficulty they experience referring their clients to legal aid lawyers in London. These experiences are explored in further detail in this report.

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# Summary

## Introduction

When somebody asks for help with immigration or asylum and is referred for legal aid, more often than not, those supporting them cannot find anyone to take that referral up. In 2023, there is a real risk that they will be prevented from doing so by a long-running Government failure to make legal aid available for immigration and asylum services.

As a result, individuals in need of legal aid are finding themselves **adrift in an ocean of unmet need**.

This report summarises the experiences of organisations attempting to help people access immigration legal aid advice and the experiences of over-stretched legal aid providers who are unable to meet the demand in their areas, as well as those who have given up on legal aid as a sustainable area of legal practice.

What the report shows is **an advice sector that has collapsed**:

Immigration and asylum legal aid work is not sustained by legal aid fees. So, **providers rely on mixed funding**; the limited provision that remains is heavily subsidised by providers and grant funders.

**Support organisation's referrals are going unanswered**, as **provider capacity is saturated**. The report shows a system which is largely kept going by a small number of dedicated actors who, in exchange for stagnant pay, regularly work long, additional, unremunerated hours. The system is unequipped to replace such individuals and organisations when they inevitably move on or cease operations.

**Individuals struggle to access Exceptional Case Funding**. Some people seek legal aid with a problem that would normally be out-of-scope when their problems have potential to breach their fundamental rights. Such individuals might be eligible for Exceptional Case Funding but, as this report will show, they will struggle to get it. Rather than Exceptional Case Funding protecting individuals' fundamental rights, it acts as an additional barrier to those seeking to access legal aid.<sup>1</sup>

## Why have we produced this report?

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<sup>1</sup> See further the accompanying explainer 'Adrift: Navigating the immigration legal aid framework'.

In this report, the Public Law Project (PLP) and Haringey Migrant Support Centre (HMSC) are sharing information gathered as part of pre-litigation research into a proposed judicial review against the Lord Chancellor, who, under s. 1(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the Act') has a duty to 'make legal aid available' in England & Wales for certain types of civil legal services, including specified immigration and asylum issues.

We have worked with partners to gather evidence about the situation across England & Wales. We are particularly grateful to Migrant Legal Project, who have helped to gather information about the situation in the South West, and Greater Manchester Immigration Aid Unit, who have done the same in the North West.

We hope the information gathered may be of assistance to others exploring legal action or undertaking policy and influencing work.

We are open to working collaboratively with others on these issues and we are contactable via email ([enquiries@publiclawproject.org.uk](mailto:enquiries@publiclawproject.org.uk)). This report has been made possible by a grant to HMSC by the [Strategic Legal Fund](#).

## Overview: Immigration legal aid in 2023

This report is primarily based on information gathered between March and June 2023, when we completed our initial evidence gathering on this issue. It aims primarily to provide a snapshot of the situation in as much of England & Wales as possible at that point in time. Sadly, we are aware that the situation may have deteriorated further since then in some of the geographic areas this report examines. We have highlighted these subsequent developments where it would otherwise leave a misleading impression of the situation.

Concerns about the sustainability of civil legal aid practice in general are long standing and pre-date the current legal aid scheme. Several recent parliamentary enquiries have raised concerns.<sup>2</sup> There is a large body of existing evidence setting out the difficulties that providers have in running sustainable practices. There is a consensus that good quality legal aid services only exist where they are subsidised by grant funding or other areas of privately paying practice.<sup>3</sup>

Areas of limited or no legal aid provision are vast. As of 31 March 2023, 39 million people (66% of

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<sup>2</sup>See House of Commons Justice Select Committee '[Future of Legal Aid](#)' (2021) and Westminster Commission on Legal Aid, '[An inquiry into the sustainability and recovery of the legal aid sector](#)' (2021), each summarised in Annex B.

<sup>3</sup> See for example Matt Howgate, Legal Aid Practitioners Group, 'The Fragility of Legal Aid' (2023). Available [here](#). Matt Howgate, reflecting on 15 years of running an organisational development consultancy service for legal aid firms, wrote "across those 15 years, I haven't worked with a single non-profit agency that hasn't had to subsidise its legal aid work from other funding [and] I have rarely found any 'for profit' (don't laugh!) law firms that actually get legal aid to cover full costs."

the population) do not have access to an immigration and asylum provider in their local authority area.<sup>4</sup> Established providers are limiting the types of work that they take on or leaving the market.

Legislative and policy changes currently being implemented may significantly increase demand for immigration and asylum changes soon. Uncertainty surrounds significant legislative and policy changes that create entirely new categories of work that the few remaining providers must prepare to advise on:

- The Nationality and Borders Act 2022 created new categories of legal aid immigration and asylum work which necessitated a consultation on 'new fees for new services'.<sup>5</sup> However, relevant provisions of that act have not yet been brought into force and the Government has no immediate plans to do so.<sup>6</sup> The provisions being ostensibly overtaken by the Illegal Migration Act 2023.
- In February 2023, the Government announced a 'Streamlined Asylum Processing' policy<sup>7</sup> that resulted in thousands of detailed questionnaires being sent to individuals with outstanding asylum claims (who needed assistance to complete them, as they ask detailed questions about the substance of their case). It remains to be seen how many other individuals the policy will be applied to or the further impact it will have on provider capacity.
- Further changes to policy and practice are anticipated as a result of the passage of the Illegal Migration Act 2023, which again has necessitated a consultation on fees due to new categories of work being created.<sup>8</sup> The impact on demand is again difficult to predict fully, though NGOs and providers have each expressed concerns,<sup>9</sup> and the timetable for implementation is once again unclear.

In the meantime, changing Home Office dispersal practices are significantly increasing demand for

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<sup>4</sup> Law Society, 'Legal Aid Deserts' (2023).

<https://www.lawsociety.org.uk/campaigns/legal-aid-deserts> - last updated 31st March 2023

<sup>5</sup> The consultation can be found [here](#) and PLP's joint response with the Immigration Law Practitioner's Association can be found [here](#).

<sup>6</sup> Confirmed at p2, §14 of the [Tribunal Procedure Committee's consultation response on possible changes to the First-tier Tribunal \(Immigration and Asylum Chamber\) Rules and the Upper Tribunal Rules arising from Nationality and Borders Act 2022](#).

<sup>7</sup> <https://www.gov.uk/government/publications/streamlined-asylum-processing/streamlined-asylum-processing-accessible>

<sup>8</sup> The consultation can be found [here](#) and PLP's response [here](#).

<sup>9</sup> An open letter published by Duncan Lewis Solicitors, the largest provider of immigration legal aid, can be found [here](#).

legal aid in areas of the country with extremely limited (or no) legal aid provision. For example, the Bibby Stockholm barge<sup>10</sup> has been located in Portland, Dorset, where there are currently no legal aid providers.

As a result, support services who do not provide advice themselves are at a loss as to where to refer people<sup>11</sup> and there are high numbers of people unrepresented throughout the asylum process. There is no significant surplus of capacity in other areas of the country that would make remote advice provision a realistic option.

PLP has produced a separate explainer which details the complex and bureaucratic legal aid scheme governing the immigration legal aid sector (available here). Providers must piece together and interpret from multiple sources (primary legislation, regulations, several forms of guidance, contractual obligations, and the quirks of government IT systems). The explainer shows how **administrative burdens and financial risk to providers result from the design of the scheme itself**. In addition, key terms for this report are defined in the 'Key Terms' section at the end of the report.

Annexed to the report is a literature review, which aims to provide an overview of the many inquiries by academic researchers and parliamentarians since the introduction of the Act. We have identified resources which we consider most important to stakeholders who seek to influence policy in this area.

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<sup>10</sup> Home Office [Press Release](#) about the Bibby Stockholm asylum accommodation.

<sup>11</sup> Daniel Newman and Jon Robins, Cambridge University Press 'Access to Justice and the role of parliamentarians: what happens to those who fall through the justice gap?' (2023) at p.9: "[MPs] articulated the position that they saw the problems but were often not able to signpost as they once did, though neither were they able to give legal advice."



# Charting the Ocean

What follows is a summary of how the immigration and asylum legal aid sector is currently operating. It documents the challenges reported by providers of immigration legal aid and by support organisations who refer to them.

Information has been broken down by procurement area (where sufficient data has been obtained) to demonstrate that similar challenges are being faced across England and Wales, but also to highlight the diversity of impact.

We have identified four experiences shared across those who provided evidence:

1. **Providers rely on mixed funding.** Legal aid fees do not meet the cost of providing legal aid services, so providers must find other ways to fund them. Usually, firms do so by drawing on private or charitable income and relying upon the goodwill of staff. Types of subsidy include:
  - Grant funding - [Greater Manchester Immigration Aid Unit drew on funding](#) from 17 different charitable funders, subsidising legal aid work by around £285,000 and relying on a further grant funding to be able to train staff.
  - Unpaid work by providers - LAPG's Legal Aid Census 2022 highlighted in our [literature review](#) found that 91% of practitioners undertook unremunerated work, with 2.2 hours being the median amount of hours taken to be paid for 1 hour's work.
  - Unpaid work by referral organisations - [Migrants Organise undertake initial preparatory work](#), such as obtaining Home Office documents that providers could in theory charge for under legal aid.
  - Supplementing with better paid work - [Wilson's Solicitors indicate](#) their lawyers must take on a private case paying £88 p/hr, to subsidise a legal aid case paying (£52 p/hr), as the break-even cost is around £70 p/hr.
  - Alternative funding of individual cases - [Migrant Legal Project undertake family reunion cases](#) under funding from the Red Cross, rather than applying for Exceptional Case Funding, which isn't considered financially viable.

Organisations in some areas have access to funding from local authorities or devolved government; while the source of mixed funding might differ by area, the fact remains that legal aid fees do not adequately fund legal aid work.

2. **Support organisations' referrals are going unanswered:** PLP's national Legal Aid Capacity Data Collection Survey found that only 1 in 16 referral attempts to legal aid providers were successful. Even in London and the South East, there are the most providers, an increasing and significant proportion of individuals are unable to access advice and assistance:

- [HMSC were unable](#) to place 58% of visitors over a 6 month period (compared with 38% over an early period).
- [Migrants Organise were unable](#) to place 41% of their service users, despite undertaking parts of the preliminary work themselves and making around 35 referrals per person.

As a result, support organisations (some of whom are without legal expertise) are forced to prioritise some clients over others. They are therefore stuck in a position of having to determine whose problems are more severe and whose are in more urgent need of resolution. While some organisations have attempted to take on staff qualified to give regulated immigration advice, this can only mitigate some of the damage to service users and cannot replace legal aid. Support organisations cannot fund disbursements on cases (such as expert reports), struggle to recruit staff and cannot undertake judicial review work (which may arise during a case).

The scale of unmet demand differs by Procurement Area. It is particularly acute in the South West and the North East.<sup>12</sup> Unmet need in the South West follows a dramatic increase in demand for immigration and asylum services: dispersal numbers there have risen abruptly, and new locations have been assigned as dispersal areas.<sup>13</sup> In the North East, the effect is largely supply driven: very few providers remain there.

3. **Providers' capacity is saturated.** Immigration legal aid providers report far more enquiries than they can take on, and may triage according to their view of those most in need and are under pressure to work quickly. [A mapping exercise by Refugee Action](#) and smaller, follow up mapping exercises by [Manuel Bravo Project and others](#) indicate vast gaps in capacity. **Greater Manchester Immigration Aid Unit** has had to obtain funding for an extra staff member [just to manage its waiting list of UAS Children Cases](#). Where there are concerns about providers' work, there is often no alternative legal aid

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<sup>12</sup> This reflects existing data about areas which lack local provision. See, for example, the Law Society's ['Immigration and asylum - legal aid deserts' map](#).

<sup>13</sup> As explained in [this letter from the then Minister for Safe and Legal Migration](#), the Government is moving to a 'full dispersal model' for asylum accommodation. All local authorities are now expected to participate in housing asylum seekers.

provider to approach instead. Many providers still offer work to a high standard, but they are only able to do so because of dedicated individuals whose services go far beyond what they bill for. [Firms encounter difficulties retaining, developing, and recruiting replacements](#), so services are at risk of closure when experienced individuals leave or retire.

4. **Individuals struggle to access ECF.** Where providers do take on ECF work, they do so at an even greater loss than they would in-scope work. As a result, many providers have stopped accepting ECF work altogether. This is particularly concerning given that ECF work, by definition, concerns clients' fundamental rights. This is the case even where support organisations attempt to reduce overheads for providers by supporting individuals to obtain a grant of ECF from the LAA before referring the case to a provider.

Concerns about accessing ECF were most often raised by organisations in London. However, we heard of organisations struggling to refer ECF cases in every procurement area where we gathered evidence.

# London and South East Procurement Area

We have gathered information from four organisations in the London and South East Procurement Area:

**Haringey Migrant Support Centre ('HMSC')** co-authored this report and was introduced at the outset. They are regulated to provide initial advice, and can help individuals to apply for Exceptional Case Funding, but cannot currently provide ongoing casework assistance. They therefore seek to refer individuals to legal aid providers (where eligible) or private immigration advisors.

**Migrants Organise** provides a platform for refugees and migrants to organise for power, dignity, and justice to enable meaningful inclusion and integration. They combine advice and support for individuals affected by the hostile environment immigration policies with community organising, advocacy, research, and campaigning to help dismantle structural racism.

The Migrants Organise Community Programme comprises of casework support, long term holistic support and a wrap-around service dealing with 'hostile environment' issues whilst individuals try to regularise their immigration status. It also runs a specialist Migrants Capacity Advocacy Project ('MMCA project'), which assists migrants and asylum seekers with issues with their mental capacity under the Mental Capacity Act 2005, to engage with the immigration process. Their team is made up of two OISC level 3 caseworkers, one level 2, one level 1 and two external consultants. Migrants Organise has begun to increase the casework they undertake on behalf of service users, rather than seek to refer to legal aid providers: see further [below](#).

**Wilsons Solicitors LLP (Wilsons)** is a predominantly legal aid firm based in Tottenham that specialises in immigration and asylum, family, and public law. It is one of the largest legal aid providers with 50 lawyers specialising in immigration and asylum. Wilsons have shared with us their response<sup>14</sup> to the Joint Committee on Human Rights inquiry into the human rights of asylum seekers in the United Kingdom. Wilsons have calculated that their legal aid controlled work is loss making.

**Duncan Lewis Solicitors Ltd** is the largest provider of legal aid services in the UK. In July 2022, the firm had a total of 190 fee-earners in the Immigration and Public Law Departments: 14 Directors; 61 Solicitors; 18 Trainee Solicitors; 77 Caseworkers; and 20 Consultants. Duncan Lewis provided us with two sources of evidence: their open letter to the Lord Chancellor and the Director of Legal Aid

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<sup>14</sup> <https://committees.parliament.uk/writtenevidence/114360/html/>

Casework written in response to Ministry of Justice consultation on Legal Aid Fees in the Illegal Migration Bill; and their response to the Ministry of Justice Immigration Legal Aid Consultation on new fees for new services.

### **Providers rely on mixed funding.**

**Migrants Organise's** organisational model was originally based on doing the initial work to prepare a case (indirectly subsidising the legal aid scheme by doing some of the work that a legal aid provider could undertake). They then refer on to a legal aid solicitor, having completed as much of the preparatory work as possible. This includes gathering documentation and making Subject Access Requests on an individual's behalf, as well as applying for Exceptional Case Funding. They have also begun drafting documents such as witness statements for NRM cases which would traditionally be done by solicitors.

As it has become more difficult to refer, the team are beginning to rethink their model and have started to take on clients themselves. However, there are limitations as they cannot pay for expert reports needed on a case or undertake judicial review work (which may arise in the course of a case). It has been particularly difficult with individuals taken on through the Mental Capacity Project. Here Migrants Organise have already had to complete applications and make representations themselves for vulnerable individuals with complex mental health issues.

**Wilson's'** break-even cost for lawyers is £70 per hour. As the hourly rate for controlled work is £52.65, to take on controlled work a lawyer must earn at least £88 per hour from a private case. This assumes full recovery at the hourly rate for controlled work, which only occurs if the case reaches the 'escape fee'. Wilsons calculate that the actual rate for controlled work can fall as low as £20 per hour (which would require a fee earner to subsidise with private work paying £120 per hour).

Fee earners, particularly solicitors, understand that they must limit the amount of controlled work they take on to achieve their targets and maintain a sustainable practice. Controlled work is generally undertaken by their lowest paid (and least experienced) fee earners - caseworkers and trainees who do not have the same financial targets as qualified fee earners.

A consequence of doing legal aid work in volume, and at a loss, is that the values of salaries the firm can pay fee earners as they progress in their careers is depressed. As a result, they have lost staff in the 12 months to April 2023, to better paid positions in the Government Legal Department, to NGO policy roles and to private practice firms without a legal aid focus.

To pay competitive salaries commensurate with experience, the billing targets for senior staff are not achievable if they take on low paying legal aid cases. The Legal Help and Controlled Legal Representation work is predominantly done by caseworkers and trainee solicitors supervised by experienced practitioners. Once a solicitor qualifies, on a salary of £33,000 (£34,750 from July

2023), a caseload of solely controlled work is no longer feasible.

Wilson's employ five full-time staff to administer and bill their legal aid work at a cost of around £200,000 annually. This work is mostly non-chargeable and adds to the firm's overheads on top of all the usual costs associated with running a law firm.

**Duncan Lewis'** controlled legal aid work operates at a loss. They attribute this to the real value decline of legal aid fees and to work usually being remunerated by a fixed fee which consistently underestimates the amount of work done on a file. Duncan Lewis highlights that they have been prepared to operate services at a loss because of their commitment to providing effective legal representation for asylum seekers and victims of trafficking but it will soon be unable to carry on subsidising legal aid fees.

The firm estimates that its 2022/23 overhead costs will total £7,045,000 or approximately £64 per fee earner, per day. It estimates the average hourly cost of fee earners (including their and their supervisor's salaries but excluding overhead costs) to be £29.04 per hour. Accordingly, if fee earners bill five hours a day, the legal aid London hourly rate (£51.62) leaves a margin of £2.58 per fee earner. If work is remunerated at a fixed fee (as immigration work predominately is), the margin is negative.

To demonstrate why the margin for fixed-fee work is lower than hourly rates work, Duncan Lewis has calculated the gap between the fixed-fee remuneration it received for work done and the remuneration it would have received had the work been paid at the legal aid hourly rate. In 2019/20, files presenting the firm with a lost opportunity cost were valued at £347,322 whereas files presenting the firm with an excess gained were valued at £4,805.

Duncan Lewis also highlight that their costs are increasing in three areas of expenditure: to support fee-earners suffering from vicarious trauma, they expend £24,000 on occupational therapy each year; very few interpreters offer their services within the £25 limit; and their auditing and compliance costs have increased.

### **Support organisations' referrals are going unanswered.**

HMSC has gathered statistical data (see further Annex A) from its referral efforts over two six-month periods (01/12/21 - 31/05/22 and 01/08/2022 - 31/08/23). Their experience is that it is becoming **harder** to place their service users (who they refer to as 'visitors') with legal aid solicitors. This is reflected in the data gathered:

- HMSC was unable to place 58% of visitors over the later period (38% previously).
- The number of cases successfully referred to legal aid providers outside of an agreed referral partnership has declined to 15% (33% previously).

- The average time visitors who were not successfully placed within the 6-month period had been waiting has increased to 47 weeks (30 weeks previously).

HMSC changed their working practices between the first and second period. Referrals to non-partner organisations had a low success rate (2.8% in the first period),<sup>15</sup> so HMSC diverted its efforts to attempts at developing new partnerships. Therefore, the above comparison is provided with the following caveat: while the proportion of referrals successfully referred to non-partner providers declined, so did the number of referral attempts (which fell from 910 in the first period to 339 in the second).

**Migrants Organise** have gathered statistical data from their referral efforts over a seven-month period between April and October 2022. Their experience is that it is becoming harder to place their service users (who they refer to as ‘members’) with legal aid solicitors. In this period, they made 1068 referrals for 51 cases to 23 legal aid firms. 30 cases were accepted by legal aid providers. The unsuccessful cases have been waiting for an average of one year for a solicitor. Of this group, 59% have found a legal aid solicitor and, on average, an individual had to be referred 35 times before one of their referrals was taken up. This data comprises in and out of scope work including ECF cases, initial asylum claims, fresh asylum claims and NRM cases.

The caseworkers have had to develop a process to optimise the chances of a successful referral. A document listing 23 legal aid providers is used with a colour coded designation of each client’s situation by urgency (red, yellow, green). Each week one of the team used to refer all the cases on the list to all the legal aid providers. However, this was becoming impractical and demoralising for staff, so that now referral attempts are only made for the red cases on a weekly basis. Spending increasing time navigating the legal aid referral process also leaves the team less time to fulfil other important parts of their roles.

There is no centralised process for making referrals. Previously, a list of all the outstanding cases would be prepared on an email and sent to legal aid providers. Now each caseworker must rely on personal relationships with individual solicitors and each email must be targeted and personalised to have any chance of success.

Three years ago, pre-covid, initial asylum claims used to be placed with a legal aid solicitor within a week. A successful referral for an initial asylum claim is now treated as a reason to celebrate and a big event in the team.

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<sup>15</sup> [Annex B](#)

## **Providers' capacity is saturated.**

Due to the difficulties referring, **HMSC** have sought to increase their own capacity to provide advice. They secured grant funding for an OISC Level 3 caseworker from Trust for London. It took two attempts, and the charity only received a single application from an appointable candidate. This was from a candidate with whom they had an existing relationship, shortly after the second advertised application period. HMSC is not pursuing other funding opportunities due to this experience, which indicated they may undertake significant efforts without success.

HMSC have also encountered issues with the quality of representation and have a recent experience of visitors being prejudiced by a provider's decision to close their immigration department. As a result, those visitors are at an increased risk of destitution, detention, or removal. They have reported missed deadlines; associated mental health problems; and a sense that they are unable to protect their families and children from the same harms.

**Migrants Organise** caseworkers are finding that solicitors are taking much longer to progress cases that have been successfully referred. Communication and response times are now limited and delayed. It also seems that solicitors are now more overworked and off sick more regularly. Previously, if communication was poor with a particular solicitor, the caseworker would recommend to the member to change solicitor. However, this is no longer a viable option.

An unfortunate consequence of this is that more members are turning to private firms to take on their cases, even when they are ostensibly eligible for legal aid. The quality of the work is often poor, and these members will then end up asking Migrants Organise for referral help further down the line. At this advanced point, their cases have often progressed unsatisfactorily and are likely to be even less appealing for legal aid solicitors to take on than they were originally. This inevitably leads to further financial hardship for individuals in an already precarious situation.

The Migrants Organise team receive around 150 new referrals to their service each year: 33% self-referrals and 66% professional referrals. Caseworkers are periodically forced to close the service to new referrals due to capacity issues and triage the referrals they do receive based on the individual's needs and other sources of support.

**Wilson's** are generally at capacity. They don't maintain waiting lists. They do not have a centralised process for managing referrals or new enquiries. Teams develop their own referral pathways and relationships.



## Individuals struggle to access ECF.

HMSC note an increase in asylum matters (which are unambiguously in-scope), and note that ECF grant rates in Article 8 ECHR cases are well above 80%.<sup>16</sup> HMSC identify that [certain types of cases](#) are more difficult to place than others, in particular work that would require a grant of ECF.

PLP's previous research has found that ECF cases have always been harder to refer.<sup>17</sup> Providers consider that it operates at an even greater loss than in-scope work because it introduces significant further administrative overheads. Many firms are no longer taking on these cases at all. This is even when the ECF application has already been completed by **Migrants Organise** and approved by the LAA.

Firms that do undertake ECF work may take steps to limit the amount of this work that they undertake. For example, **Wilson's** do undertake ECF work but generally where it arises in connection to an existing client (for example an asylum claim where there is an Article 8 ECHR claim that could be raised alongside it).

## Case Study: Haringey Migrant Support Centre

### HMSC referral statistics

HMSC recorded information about referrals for the six months from 1<sup>st</sup> December 2021 to 31<sup>st</sup> May 2022. Its main findings were:

- HMSC was unable to place 38% of visitors over the period.
- Only 33% of the cases were placed with legal aid solicitors who do not have a formal referral pathway with HMSC, i.e., via a normal referral process.

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<sup>16</sup> HMSC's own experience, where they have assisted with applications, is of almost 100% success: 252 ECF applications since 30/01/2018 (a bit over 5 years) and only three have been refused.

<sup>17</sup> See for example Emma Marshall 'Improving Exceptional Case Funding: Responding to COVID-19' (2020).

- 22% of the cases that went via a normal referral process ended up with pro-bono solicitors, charities, or private solicitors, who often need to cover for the lack of legal aid providers.
- Only 4.1% of 864 attempted referrals to legal aid providers were successful. If you exclude those legal aid providers who already have a formal relationship with HMSC, only 2.8% of attempted referrals to non-partner legal aid providers were successful.
- The average waiting time to find a solicitor as of 31/05/22 was over 20 weeks (it is in fact more because it does not include the week's past this date, when many visitors will still be waiting). Nearly 20% of visitors waited over 40 weeks to find a solicitor.

HMSC did so again for the six month period from 1<sup>st</sup> August 2022 to the 1<sup>st</sup> January 2023. Their findings show that things had generally gotten worse:

- HMSC was unable to place 58% of visitors over the period (38% previously).
- Only 15% of the cases were placed with legal aid solicitors who do not have a formal referral pathway with HMSC, i.e., via a normal referral process (33% previously).
- 19% of the cases who went via a normal referral process ended up with pro-bono solicitors, charities, or private solicitors, who often need to cover for the lack of legal aid providers (22% previously).
- Only 5.9% of 309 attempted referrals to legal aid providers were successful (4.1% previously).
- For the cases that had not been placed as of 31/01/23 (46 cases), the average waiting time to find a solicitor was over 47 weeks

(against 30 weeks in the previous period) - with more weeks to come.

HMSC have provided detailed statistics about the referrals it made in the two periods. The statistics have been annex to this report (Annex A).

HMSC have also provided the following real-life examples which describe the difficulties experienced by two visitors in trying to access legal advice:

### Visitor A

A woman in her fifties, who appeared to be a victim of modern slavery, was advised by HMSC on 3 May 2022. She was advised to seek a referral to the National Referral Mechanism and made an application based on very significant obstacles to reintegration. No solicitor was found. She was detained on 14 June 2022 and claimed asylum in detention. She was forced to find the money to pay a private solicitor. In August 2022, she received a positive decision finding that there were reasonable grounds for believing that she might have been a victim of modern slavery. She still had no legal aid solicitor and could no longer afford her private solicitor.

The Home Office refused her asylum application on 5 December 2022. A private solicitor helped her submit an appeal pro-bono but the quality of their work was poor. The appeal was declared invalid. By the time she found a legal aid solicitor, on 9 February 2023, the appeal deadline had passed. Her legal aid solicitor helped her make an out of time appeal. It took her 9 months to find a solicitor, even though she was in the National Referral Mechanism.

### Visitor B

A visitor was advised by HMSC on 7 June 2022. They were advised to make an asylum application but neither they nor HMSC could find a legal aid or pro-bono solicitor.

The visitor's screening interview was on 4 October 2022. The visitor did not have access to an advisor competent to prepare them for interview, so they went to the interview unprepared. Later, the Home Office issued them with a s.120 notice (a notice to provide additional grounds outside of the scope of their initial application). The visitor also had to respond to this without a representative.

They finally found a legal aid solicitor found on 8 February 2023, 8 months

after the advice session.

# North West Procurement Area

We have gathered information from four organisations in the North West Procurement Area:

**Greater Manchester Immigration Aid Unit (GMIAU)** is a not-for-profit immigration and public law provider in the North West Procurement Area. Around half of GMIAU staff deliver legal aid services from two offices in Manchester and one in Liverpool. GMIAU has insight into levels of unmet need through its destitution services and other projects: an advice line, the Windrush Compensation Scheme, Domestic Violence work and Refugee Family Reunion work.

**Refugee Action** in Greater Manchester is a regional office of the national refugee support organisation, whose service users regularly need referrals to legal aid providers.

**Penrith and Eden Refugee Network (PERN)** is a grassroots community network which aims to welcome immigrants and refugees who arrive in their area. They are volunteer-led and offer legal and information drop-in services.

**British Red Cross** in Liverpool is a regional office of the international humanitarian organisation which provides support internationally for people in crises. They are the UK's largest independent provider of services for refugees, asylum seekers, vulnerable migrants, and survivors of trafficking.

## Providers rely on mixed funding.

**GMIAU** is only able to deliver quality legal aid services because it draws on significant charitable grant funding. In 2021/22, it drew upon funding from 17 different funders (circa £800,000) in addition to its legal aid income (circa £400,000). GMIAU considers its legal aid work to be 'heavily' subsidised by grant funding.

GMIAU have shared their accounts for 2021/22. GMIAU estimates the level of subsidy to be around £285,000 per annum. GMIAU has also benefited from hosting several Justice First Fellows over the last five years. These are trainee solicitors whose salary is met by the Legal Education Foundation.

## Support organisations' referrals are going unanswered.

In addition to its work with unaccompanied asylum-seeking children (see [below](#)), **GMIAU** maintains waiting lists for both in-scope and out-of-scope work that is likely to be granted ECF. As of March 2023, there were over 100 people waiting on these lists. Previous practice was to remove people from waiting lists after 2 months and signpost. However, GMIAU changed its practice when it became clear that those people were not able to find help elsewhere. GMIAU is now turning away new referrals and has closed these waiting lists. In addition to GMIAU, two other providers indicated they have long waiting lists (over 160 people).

**Refugee Action** in Manchester have found it increasingly difficult since October 2022 to refer people to their usual list of 10 legal aid providers. All are now indicating they have no capacity for the foreseeable future. The **Red Cross** in Liverpool respond to between 50 and 60 people requesting legal representation for asylum applications every week. They report that the service level demanded by the quantity of referrals they make is far beyond the service level currently sustained in the area. They have responded to concerns about low-quality provision by only making referrals to providers known to carry out work to a satisfactory standard. Their waiting list is up to a year long.

PERN's volunteer legal service operate in Cumbria, where there are no legal aid immigration lawyers nor any registered advisors (although as of July 2023, PERN has been able to offer OISC level 2 advice and support for asylum and protection). There are around 400 places for asylum seekers in 5 contingency hotels in Cumbria. PERN's volunteers have attempted triage of cases to Law Centres and Law Firms but had only limited success. They assist people to prepare their own asylum cases using a 'Right to Remain Toolkit'. At a recent drop in there were 17 attendees and only around a quarter had a lawyer.

PERN report that their clients feel vulnerable without legal representation and regularly complain of "extreme stress" as a result. Very often, the people who PERN represent are in limbo: they fear that their individual asylum cases could turn on any question the Home Office might ask of them at any time, and they feel totally unprepared to provide legalistic answers without representation. PERN are concerned that the Home Office backlog has prolonged this limbo period, particularly because asylum seekers in the queue are either not yet eligible for legal aid or a low priority for providers whose capacities are saturated.

### **Providers' capacity is saturated.**

GMIAU has 450 matter starts at its Crumpsall office, 225 at its South Manchester Office and 150 at its Liverpool Office. They do not expect to use all of them in 2023-24, based on having used 156, 72 and 55 to date. GMIAU did not use all their allocated matters starts at any of their offices in 2020-21 or 2022-23.

GMIAU's advice line, Domestic Violence and Refugee Family Reunion projects can generate in-scope and ECF work that GMIAU takes on when it has capacity. However, demand for GMIAU's services now exceeds its capacity and appears to be increasing. Referrals increased by 137% last year.

GMIAU prioritises unaccompanied asylum-seeking children ('UAS children') cases over other work, but due to a marked increase in referrals it now prioritises this cohort based on age (17.5-18-year-olds). GMIAU has secured grant funding for a position just to manage the UAS children waiting list: dealing with initial administration related to the legal aid scheme so cases can be taken up quickly. In March 2023, there were 274 children on the UAS Children waiting list.

GMIAU is seeking other grant funding from local authorities to subsidise UAS children cases, which it considers loss-making. However, it faces recruitment and retention issues and so has also been undertaking capacity building work with other organisations who do not hold legal aid contracts. GMIAU has had an open position for a solicitor/caseworker since summer 2022. GMIAU is concerned that staff morale is being affected by the organisation's inability to meet the demand for UAS children's cases and the lack of viable alternatives to refer people to. GMIAU and its referrers have concerns about the quality of advice provided by some legal aid providers.

# South West and Wales Procurement Areas

We have gathered information from five organisations across the South West and Wales Procurement Areas.

**Migrant Legal Project (MLP)** is a not-for-profit organisation, set up in 2011. Their first immigration legal aid contract was a Plymouth specific contract in 2012 which was created due to the collapse of the Immigration Advisory Service and of legal aid in the South West. Three further offices were opened in Bristol and Cardiff in 2013.

**Devon and Cornwall Refugee Support (DCRS)** are a charity providing advocacy, advice, support, education, and a welcoming communal space for asylum seekers in the region. They are one of MLP's main referrers. The organisation is funded through charitable grant funding, including from the National Lottery, alongside donations from organisations and individuals. They do not receive any statutory funding. DCRS have 8 employees (7 full-time) made up of caseworkers and co-ordinators, alongside a team of 40 volunteers. They run an advocacy and advice service, work with different regional voluntary organisations and are the central point of contact across the region for complex case work up to OISC level 1. They also facilitate English classes, IT access, outdoor activities, and other social activities for service users.

**Gloucestershire Action for Refugees and Asylum Seekers (GARAS)** are another one of MLP's main referrers. They provide support to refugees, asylum seekers and other migrants. GARAS aims to welcome asylum seekers when they arrive, and provides advocacy and drop-in advice services.

**The Harbour Project** gives friendship, advice, and hope in aid of refugees across Swindon. They welcome over a hundred visitors a day and provide a full-time advice service up to OISC level 1.

**South West Law (Legal Services in the Community) Limited** used to provide legal aid services, including immigration and asylum, in the South West. It closed in 2022. A former director has provided a detailed case study which highlights the pressures which made the business unsustainable and led to the organisation's demise.

## Providers rely on mixed funding.

MLP undertake a small amount of private work (less than 10% of their casework). However, this is generally taken on for low-income families where legal aid is not available and so does not subsidise the legal aid work. MLP also relies on grant funding in order to provide refugee family reunion services, see further [below](#).



## Support organisations' referrals are going unanswered.

DCRS describe that they are facing increasing difficulty in referring cases on. The situation is worse than a year ago when a higher proportion of service users had representation and found a lawyer in a shorter timeframe. There are fewer firms open to new cases with an increased number of people requiring them.

Devon and Cornwall are now Home Office dispersal areas. Whereas previously DCRS were supporting up to 360 service users, they are now supporting 943 asylum seekers across 6 hotels in Ilfracombe, Exeter, Torquay, and Newquay. This has led their services to become severely overstretched as they endeavour to provide adequate support for this much larger group. Service users are triaged by local voluntary organisations at the individual hotels where needs assessments are carried out. If a legal aid referral is required, this is then completed by DCRS.

Devon and Cornwall was identified in research by the Law Society as an immigration/asylum advice desert in June 2021, with only one provider in the entire region (in Plymouth). The nearest firms are based in Bristol and South Wales, but it is difficult and expensive to travel across the region. This has worked for a limited number of service users, who are referred to Migrant Legal Project in Cardiff, but with only two casework staff, this arrangement is not possible for most individuals.

The Legal Aid Agency recognised this unmet need and provided DCRS with a list of legal aid providers outside Devon and Cornwall who were purportedly able to take on new cases remotely. DCRS contacted all these providers but only four of the 20 firms listed responded to them. One firm, Albany Solicitors, initially offered to take on a number of referrals but, after taking on 30 or so cases, informed DCRS that they no longer had the capacity to take on any more. The firm has since withdrawn from legal aid (see below). Another firm also took on cases but has since informed DCRS it is at capacity. The other two firms did not take on any cases.

Remote representation is also not suitable in many complex cases where the individuals may be particularly vulnerable. There have also been serious quality control concerns with other providers. Their experience with two firms has been that when they refer service users to them, their asylum claims will probably be rejected, and this will only lead to more complicated work and extra need for support further down the line. Beyond provision of the remote provider list, the Legal Aid Agency have made no attempts with DCRS to address the failure of supply in Devon and Cornwall.

In March 2023, **GARAS** were working with around 650 asylum seekers housed in housing and four hotels in the area, as well as UAS children housed by the local authority. These numbers have since risen to around 900, and may reach as high as 1000, as the population in one hotel was expected to double. Significant numbers of these individuals are without legal representation. GARAS are prioritising based on need and there is no standardised referral mechanism for new claims. Every case must be individually allocated to a potential legal aid solicitor.

GARAS are unable to find legal representation for most clients at present unless they have received an action on their case (such as a New Asylum Questionnaire or an invitation to an interview). There is particular concern over GARAS's referrals to MLP in relation to Unaccompanied Asylum-Seeking Children (UAS children). MLP's UAS children lead is on maternity leave from summer 2023 and, without a replacement, GARAS have said they will struggle even more to place these cases.

The **Harbour Project** provides support to people in Swindon. Demand for their services has recently increased, due to changes in Home Office dispersal practices (threefold increase in dispersal numbers). They are concerned that they have around 200 people on their books who can expect to receive an ACQ,<sup>18</sup> and many are unrepresented.

The Harbour Project have noticed increasing difficulty in referring to providers as some have started restricting referral criteria (ACQ, Substantive Interview or Post Nationality and Borders Act cases only). They ring around once a fortnight as capacity changes at short notice. They have been able to find lawyers for most people who have an ACQ, but providers are prioritising these, meaning they have no capacity for other work.

### **Providers' capacity is saturated.**

MLP cover the areas of: Plymouth, Bristol, Gloucester, Swindon, and South Wales. Pre-Covid, the work was initial asylum claims, fresh claims, UAS children cases and any subsequent appeals. They are currently limiting new matters to clients with an ACQ sent under the streamlined process (see explainer) or a scheduled substantive asylum interview, UAS children cases, and SET(P) application and appeals.

MLP cannot meet the demand for their services in any given year. They bill around 400 matter starts each year across their remaining three offices. They have four members of staff who can undertake casework, including the directors. Employees have been reduced by around 60% since 2019 and cannot be replaced until the profitability/rates of pay improve, to meet the cost of recruitment training and to cover delays in LAA payments. In 2019 two full time caseworkers moved on to better paid work elsewhere and they have not been replaced.

During the COVID-19 pandemic, MLP began to be impacted by delays in Home Office decision making. At that time<sup>19</sup> it was only possible to bill work at the conclusion of a matter (i.e. when the Home Office has made a decision to grant status or refuse an application). MLP made

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<sup>18</sup> An asylum claim questionnaire, sent under the Streamlined Asylum Processing policy (launched in February 2023). The questionnaires are detailed and are sent to individuals with outstanding asylum claims (who need assistance to complete them, as they ask detailed questions about the substance of their case).

<sup>19</sup> To some extent, cash flow problems for providers resulting from Home Office delays has been mitigated since September 2022, when the Legal Aid Agency began to permit early remuneration for claims of the standard fee or of disbursements. However, this does not apply to escape claims or to claims which are under six months old; and it introduces further unremunerated administration for providers.

representations to the LAA to urgently alter the contract to allow for earlier payments, but no such change was made for two and a half years. As a result, MLP suffered from significant cash flow problems. The organisation sought assistance from the Ministry of Justice and LAA but did not receive any additional support beyond that available to businesses during COVID-19 generally (a bounce-back loan). In 2021, MLP closed one of its Cardiff offices, due to financial difficulties: the Welsh Government did not allow for COVID-19 grant payments to charities and non-for-profits, which exacerbated the organisations' financial problems in Wales.

In April 2023, MLP's most experienced senior caseworker resigned and left the sector altogether, citing burnout and despondency at the state of the publicly funded immigration advice sector. Another senior caseworker took maternity leave in 2023-24. MLP has found it impossible to find cover: they can only offer low pay for difficult work and existing staff lack capacity to take on trainees. MLP attempt to refer cases to Bristol Law Centre that they cannot take on themselves but are mostly unsuccessful. Other providers in the area have withdrawn from legal aid work altogether:

- South West Law (a former Bristol based provider) was wound up in May 2022 (see detailed case study [below](#)).
- In April 2023, Hoole and Co (a Bristol based provider) ceased offering legal aid immigration services. Its main practitioner has left and set up a firm that does not have a contract.
- In May 2023, Albany Solicitors announced their withdrawal from legal aid services. From then on, they would neither accept new referrals nor would they conduct further work for existing legal aid funded clients. Albany solicitors held approximately 30 open cases referred by Devon and Cornwall Refugee Service and between 40 and 60 referred by the Harbour Project.
  - o Albany Solicitors themselves attempted to refer their clients to other providers but *"regrettably due to a shortage of legal aid providers in the area [they were] unable to source them alternative legal representation."* Therefore, all of these people, who have identified legal problems and whose cases are ongoing, will need to find alternative representation. Unfortunately, the consistent experience of referring organisations indicate that many will not find it.
- NLS Solicitors have closed their Bristol office and no longer appear on the LAA directory of providers.
- Elisabeth Dean Solicitors are not currently taking on any new legal aid asylum cases (at

either initial stage or appeal stage) until January 2024<sup>20</sup>.

Data obtained under the Freedom of Information Act<sup>21</sup> illustrates the impact of these developments, which have left MLP the largest provider by volume in the South West procurement area, based on matter starts *opened (used)* in the year 21-22:

| <i>Provider</i>  | <i>Matter starts opened (used)</i> | <i>Current status<sup>22</sup></i>              |
|--|------------------------------------|---|
| <i>Hoole &amp; Co Solicitors</i>   | 68                                 | Withdrawn from legal aid.                       |
| <i>Bristol Law Centre</i>  | 32                                 | Active.   |
| <i>South West Law</i>  | 1                                  | Withdrawn from legal aid.                       |
| <i>ALBANY SOLICITORS</i>   | 145                                | Withdrawn from legal aid.                       |
| <i>Migrant Legal Project (Bristol Office)</i>  | 138                                | Reduced capacity.                               |
| <i>Elisabeth Dean Solicitors</i>   | 43                                 | Not taking on asylum cases before January 2024. |
| <i>Fountain Solicitors Ltd.</i>  | 30                                 | Withdrawn from legal aid.                       |
| <i>NLS Solicitors</i>  | 85                                 | Withdrawn from legal aid.                       |
| <i>Immigration Advice Service</i>  | 4                                  | Active.   |
| <i>Migrant Legal Project (Plymouth)</i>  | 72                                 | Reduced capacity.                               |
| <i>Wiltshire Law Centre</i>  | 0                                  | Withdrawn from legal aid                        |
| <b><i>Total matter starts opened</i></b>   | <b>618</b>                         |   |
| <b><i>Total matter starts opened (Providers that have withdrawn)</i></b>               | <b>329</b>                         |   |
| <b><i>Total matter starts opened (Providers that are active in September 2023)</i></b> | <b>289</b>                         |   |
| <b><i>Total matter starts opened (Migrant Legal project offices)</i></b>               | <b>210</b>                         |   |

Local Authorities in the South West have attempted to relieve the saturation of provider capacity by procuring immigration services from the International Organisation for Migration ('IOM'). The IOM is part of the United Nations System as its leading intergovernmental organisation in the field. The services procured, however, are limited to applications for indefinite leave to remain following

<sup>20</sup> Confirmed by the sole practitioner and reflected in an auto reply being sent.

<sup>21</sup> Information shared by Jo Wilding, author of 'No access to justice: How legal advice deserts fail refugees, migrants, and our communities' (see literature review, [below](#)).

<sup>22</sup> Based on information from partners and the LAA's [directory of providers](#) updated 27 July 2023 (those marked as withdrawn do not appear in that directory list).

five years' leave to remain as a refugee. While these services will undoubtedly help a small number of individuals, they are no answer for the vast majority of those trying to access immigration legal aid.

**DCRS** explain that obtaining data on the overall level of unmet demand is difficult because limited voluntary sector capacity has meant that monitoring systems are not yet in place. There are volunteers on the ground, but they require clear direction to gather the correct information. There is not currently the capacity to be able to organise volunteer groups.

### **Individuals struggle to access ECF**

**MLP** do not consider ECF work to be economically viable and so do not generally take it on unless the associated overheads can be supplemented by grant funding.

This is the case with Refugee Family Reunion referrals. They take on 20 cases per year under an agreement with the Red Cross.

## Case study: South West Law

### The Closure of South West Law

The following case study is based on an interview with a former director.

South West Law was a law firm operating in Bristol between 2002 and 2022. The decision to close was made in October 2021 and the firm was wound up in May 2022. The firm was forced to close due to unsustainable financial pressures and the inability to replace and recruit experienced staff. Profit was only made in a handful of years of operation, and any profit that was made ultimately had to be used to offset the losses made in the other years.

The firm consistently received high-level ratings on peer review as part of the LAA audit process and had a good relationship with their LAA contract manager, who recognised them as a provider carrying out high quality work.

### Pre LASPO

The firm originally held legal aid contracts in the areas of Welfare Benefits, Community Care, Debt, Education, Housing and Immigration and Asylum. The firm also did private work in some niche areas. Legally aided work made up around 80% of the firm's revenue in the early years of operation.

### Impact of LASPO

As a result of the 10% reduction in legal aid fees in 2009/2010, followed by the impact of the LASPO reforms from April 2013, the firm's legal aid practice declined dramatically. Staff numbers were reduced by 50% following LASPO. The firm was forced to move to new cheaper premises to reduce their overheads. The Welfare Benefits and Debt departments were immediately closed as these areas were largely out of scope for legal aid. At the time of closing in 2022, the firm's work was split 50/50 between legally aided and private work. By 2016 legal aid work comprised solely of Immigration/Asylum and Housing. In Immigration/Asylum around 60% of the work was private and 40% was legally aided. In Housing the split was 60% legally aided, 40% private.

### Recruitment and Retention of Staff

South West Law found it increasingly difficult to recruit experienced legal aid

practitioners and therefore their business was very vulnerable when established staff moved on. The firm could not employ solicitors who could do a sustainable mix of legal aid and private work.

When an immigration lawyer who did substantial private work moved to a new role elsewhere in 2020, it was impossible to replace him. Despite looking to recruit two new solicitors in his place, suitable candidates could not be found who were willing to work for less money than they could achieve in private practice, whilst at the same time being expected to bring in private work to subsidise the legal aid practice. A sole replacement was eventually recruited but this person did not have the experience required for private family immigration work and therefore for the team to be sustained.

In order to fulfil the legal aid contract specifications, the firm was required to employ practitioners of a supervisor standard. When staff of the required experience left the firm, notably in community care and public law, it was not possible to recruit replacements or for junior members of staff to take up the work without supervision. This forced the firm to give up their community care and public law contracts, the latter impacting their ability to do gypsy and traveller planning work which had generated significant income when in scope.

Across the entire social welfare sector, there is now a very limited pool of available practitioners. It used to be common for private law firms to hold legal aid contracts which gave junior solicitors exposure to legal aid work. However, as the real and nominal rates of pay are now so low, private firms cannot justify continuing to do legal aid work. Private practice also cannot access the supplementary funding streams that are available to law centres and other not-for-profit organisations. Firms in private practice who want to continue doing legal aid work must now subsidise this with income generated from private fee-paying cases. Private practice is effectively picking up the bill for the government who are unwilling to pay legal aid lawyers adequately for the work they are expected to do. The number of firms willing to do this is declining and it will not be possible to grow the provider network up from the ground again: "if it's gone, it's gone."

## The Role of the Legal Aid Agency

Post LASPO, the firm's immigration practice was particularly vulnerable. In scope work was suddenly limited as Bristol was not an area where refugees seeking asylum were accommodated. The number of matter starts opened plummeted and much of the firm's immigration work required applications to

be made for Exceptional Case Funding. These were often complex cases, requiring a large amount of work to be done before receiving any substantial payment from the LAA.

The requirement to have to cover the often-substantial costs of disbursements in these cases out of the firm's running costs meant that this work could not be sustained. A business decision was taken to limit the amount of this work that could be done, despite the demand existing from often vulnerable clients with ECHR claims who would have qualified for ECF.

The legal aid billing process was described as a "complete nightmare", taking vast administrative resources to manage. These overheads were not recoverable as the fees from the LAA barely covered the costs of employing the fee earning staff and admin work could not be charged for.

The firm was subject to a large-scale audit of asylum and immigration files by the Legal Services Commission ('LSC,' as it then was, the predecessor to the LAA) within the first five years of opening. The audit was of files for which SWL had already been paid. The rules allowed that if the LSC deemed a file overpaid for being out of scope or the evidence of means being insufficient, then the proportion of files in the sample deemed overpaid would be extrapolated over the total amounts paid under the contract. The provider was then obliged to repay that extrapolated sum. The disallowed files in this audit triggered a total overpayment demand of £250,000. This sum was eventually reduced on appeal to around £2,500 due to the level of errors made by the auditors. However, until that appeal succeeded, the firm faced a prolonged existential crisis since the sum demanded could not be repaid and the firm would have had to close. The appeal process and the re-audit of all the challenged files embroiled the senior management team in a huge amount of work (most of them being fee-earners themselves) and took time away from fee-earning and practice management, which affected cash-flow down the line.

In relation to escape claims, these could have £2,000 to £3,000 of profit costs (or more) which were not paid until submitted and approved. The system for submitting escape claims was time-consuming and complex. The claims were at risk not only of rejection for minor errors in completion of the Legal Help form and evidence of means, so that the work would not after all be remunerated, but also recovery of any basic payment made (e.g., £188 for a housing case or £350 for a community care case) i.e., loss of all the income



from that file. The time-consuming nature of these claims and the development of a risk-averse mentality because of the scarring effect of the immigration audit resulted in delay in escape claims being made or the withholding of claims altogether. This further affected cash-flow for the firm.

# North East, Yorkshire and the Humber Procurement Area

Our information about the North East, Yorkshire and the Humber Procurement Area has largely been drawn from five organisations:

The **Manuel Bravo Project** is a registered charity in Leeds, providing free legal representation to asylum seekers and refugees who cannot get legal aid, as well as free immigration advice through an outreach service.

**City of Sanctuary, Sheffield** is an independent charity working in solidarity with people seeking sanctuary in Sheffield, who aim for Sheffield to be a place of safety and a welcoming place for those seeking sanctuary. They operate a multi-agency drop-in advice service which often highlights where clients need to be referred for further legal support.

**Community Integration Advocacy Centre (CIAC)** is a charity in Hull which supports emerging communities to contribute fully to life in the UK as committed and active citizens. The emerging communities CIAC supports include refugees, asylum seekers, refused asylum seekers, EEA migrants and other migrant individuals. CIAC provide drop-in services and free immigration advice for asylum seekers. They also offer low-cost immigration advice to people with the right to work.

**The Immigration Law Practitioners' Association (ILPA)** is a professional association and registered charity, the majority of whose members are barristers, solicitors, advocates and OISC regulated advisers practising in all aspects of immigration, asylum, and nationality law.

**South Yorkshire Refugee Law and Justice (SYRLJ)** is a grassroots legal charity offering free immigration advice and representation to those seeking sanctuary in South Yorkshire.

## **Providers' capacity is saturated.**

**Manuel Bravo Project** have undertaken a 'mapping' exercise demonstrating the dire position in West Yorkshire and Leeds (see Case Study 3 [below](#)). In summary, there is no legal aid capacity in Leeds and the free advice has no/limited capacity to assist.

**ILPA** raised concerns with the LAA in March 2023 about the situation in South Yorkshire and received a reply stating that it was part of wider procurement area and to approach the other providers. This ignores the reality of the practical difficulties that individuals (often destitute) will have in approaching a provider out of their immediate area.

**SYRLJ** described their contact with each of the six legal aid Providers in South Yorkshire: four have no capacity and cannot say when they will have capacity, one no longer takes on legal aid matters

and one is a specialist provider that only works with victims of trafficking. City of Sanctuary, Sheffield described that when they contacted each of the four (non-specialist) legal aid providers, none had capacity.

Subsequently, **SYRLJ** (whose referrals had been refused by every provider in South Yorkshire) made efforts to contact the 19 other providers in the Procurement Area. Of the 10 who responded, none had capacity.

**CIAC** has experienced similar problems. In April 2023, following their generalist drop-in, only one provider in Yorkshire or the North East had capacity to take their referrals. That provider, however, was one which CIAC normally avoids. CIAC has also reported that they have been unable to find any providers willing to complete streamlined asylum questionnaires under the legal aid scheme. As a result, CIAC considers that the 1,000+ people dispersed to Hull will simply not be able to access the legal aid services they need.

## Case Study: The State of Immigration Legal Aid in West Yorkshire and Leeds – Manuel Bravo Project’s Mapping Exercise.

According to the Ministry of Justice website, there are now three legal aid providers for asylum/immigration in Leeds. Confirmed by telephone that none had capacity when checked. Further information:

- Immigration Advice Service - They are unable to accept new clients until 2024 for legal aid (confirmed via telephone 14/04/23)
- Collingwood Immigration - No capacity in any of their offices nationwide and they were not able to confirm any further availability for 2023. Their work is focused at the moment on asylum questionnaires (confirmed via telephone 14/04/23).

Looking further into West Yorkshire, the following firms hold contracts for legal aid work and are able to see clients from Leeds (all confirmed via telephone 14/04/23):

- **Citizens Advice Bradford and Airdale Law Centre** - No current capacity, unable to state when this will change.
- **Kirklees Law Centre** - No capacity for at least the next six months.
- **Kalsi** - No longer operate in Leeds or Bradford, unclear as to if they still have a legal aid contract or not as would not confirm or deny.
- **Batley Law** - No capacity for foreseeable future
- **Fisher Stone** - No capacity for foreseeable future

Put bluntly, the sector has pushed beyond the point of crisis into collapse. It is simply not profitable for private firms to run legal aid contracts and those left who are non-profit/charitable entities are having to heavily subsidise their work with grants and fee paying work in order to survive.

### [Advice outside legal aid - free advice](#)

The following is a list of organisations and advisers who are able to give OISC regulated Immigration and Asylum advice in Leeds (as of 23 March 2023):

| Organisation                                | Number of advisers and OISC levels   | What do they do?  | What area does the work cover? | Do they have capacity and how do people access help?   |
|---|--|---|--------------------------------|--|
| <b>British Red Cross</b>                    | 2 OISC 1 Immigration only<br>3 OISC 1 all categories<br>1 OISC 2 Asylum only   | Support and Casework, not clear if they run a caseload or just give initial advice.<br><br>Unclear what areas of work they cover  | Leeds                          | Did not respond to our calls.  |
| <b>Chapelton Citizens Advice Bureau</b>     | CAB are exempt at Level 1 so all CAB advisers can give OISC 1 advice<br><br>1 Solicitor (exempt from OISC regulation)                        | Initial advice, signposting, complex casework for both asylum and immigration matters.<br>Solicitor runs caseload of approx. 200 complex matters                            | Leeds                          | <b>No current capacity</b> - all referrals are made by contacting CAB through usual methods detailed on their website.                                   |
| <b>Leeds Central Citizens Advice Bureau</b> | CAB are exempt at Level 1 so all CAB advisers can give OISC 1 advice   | Same exemption as Chapelton but does not seem to take on matters for work beyond initial advice and signposting?  | Leeds                          | <b>No current capacity</b> - all referrals are made by contacting CAB through usual methods detailed on their website.                                   |
| <b>Manuel Bravo Project</b>                 | 4 OISC Level 3 all categories<br>2 OISC Level 2 all categories<br>2 OISC Level 1 all categories<br>1 solicitor (exempt from OISC regulation) | Initial advice and signposting for all immigration and asylum matters<br>Complex casework and legal representation for primarily asylum seekers in appeals and fresh claims | West Yorkshire                 | Weekly outreach sessions in partnership with SVP accessed by calling SVP<br>Accepts referrals for complex casework, however <b>capacity is limited</b> . |

|  |   |   |       |  |
|--|---|---|-------|--|
| <b>PAFRAS</b>                                    | 2 OISC Level 1 all categories<br><br>3 OISC Level 2 all categories                                      | Destitution casework and related matters for asylum seekers only<br><br>Refugee Family Reunion via Refugee Right Hub at Sheffield Hallam University                   | Leeds | Legal work carried out for existing PAFRAS clients only.<br><br>Family Reunion project – Referrals to Refugee Rights hub or RETAS for screening. |
| <b>British Refugee Council Resettlement Team</b> | 1 OISC 2 all categories   | Work for refugees who have arrived as part of the resettlement programme only   | Leeds | Unclear, nothing published on website about capacity or access to assistance.  |
| <b>British Refugee Council (New Roots)</b>       | 1 OISC level 2 all categories<br><br>6 OISC 1 Asylum and Protection only                                | Integration service for refugees, OISC 1 asylum and protection work only  | Leeds | Referrals made via RETAS and available to refugees who have been granted within the previous 28 days due to high demand.                         |
| <b>St Vincent’s Support Centre</b>               | 2 OISC Level 3 All categories<br><br>1 OISC 1 all categories<br><br>2 OISC 1 Asylum and protection only | Outreach session in partnership with MBP covering all immigration and asylum matters on an initial advice and signposting basis<br>In-house casework for EU nationals | Leeds | Referrals for drop in made by telephone. Clients will be placed on a call back list for further triage by a trained volunteer.                   |

# The National Picture

So far, this report has aimed to disseminate information about the different challenges within different procurement areas. We have also gathered information about the national situation. The following section of the report documents information from three sources.

Firstly, PLP conducted a national Legal Aid Capacity Data Collection Survey. In March 2023, PLP circulated the survey to collect data about the capacity of the immigration legal aid sector (the covering 'call for evidence' can be found here).

Secondly, we have consulted Rights of Women for information about their national advice lines. **Rights of Women** is a charity which predominantly supports women and girl survivors of gender-based violence. They operate three national helplines: an immigration and asylum line, an EUSS advice line, and a second-tier advice line providing advice to other organisations.

Thirdly, we have consulted barristers to consider how sectoral challenges are affecting them.

## Legal Aid Capacity Data Collection Survey

We received nine responses from support organisations trying to make referrals to a legal aid provider. Our findings are as follows:

- Most of the organisations were based in London, but there were responses from organisations in Hull and Evesham (North East, Yorkshire and the Humber Procurement Area).
- For every 16 referral attempts that were made across the nine organisations that responded, only one attempt was successful. This represents a total of only 83 successful referrals from a total of 1,337 attempts.
- In these referral attempts, seven organisations attempted to refer to between five and 15 legal aid providers, one organisation to 23 providers and another to 100 providers.
- Of the 261 cases that organisations said they had tried to refer to a legal aid provider, 57% (n=149) of cases were still awaiting a successful referral.
- Referral to a non-legal aid provider did not yield much success in this sample - only seven of the 261 cases were accepted by a non-legal aid provider (for example, pro bono) and these were concentrated in two organisations.
- Of the cases that were successfully referred, organisations said that it took on average one week to one month to secure a successful referral, although one organisation said it took on average 200 days to do so. The cases that had not been successfully referred had been waiting for between one month and over 18 months with no successful referral.

- Eight out of the nine organisations said it was harder to make an effective referral compared to one year ago. One said that they were ‘not sure’.
- Several organisations said that they had difficulties making referrals for particular case types, specifically fresh claims or cases that incur additional costs in the form of expert reports, interpreters, or travel costs. One organisation noted that, because of a lack of capacity in their preferred providers, they were forced to make referrals to a legal aid provider they ‘would generally avoid’ due to the provider’s poorer quality work.
- There was limited evidence of an increase in demand for advice because of the new Home Office practice of serving a questionnaire in ‘legacy’ cases for certain nationalities. Two of the seven organisations who responded to this question had seen an increase recently because of this Home Office practice.

## Rights of Women (‘RoW’) advice line

RoW have a case management system from which they have collated data from around 500 calls over a nine-month period from 1 July 2022 to 31 March 2023. Their data and the feedback they receive from their evaluation calls represents an opportunity to explore the success individuals have when they approach providers directly, rather than via a third-party referrer, as RoW does not routinely undertake casework or refer cases, instead providing callers with substantive advice, advice on legal aid eligibility and signposting to legal aid providers. RoW does take on a small number of strategic cases each year and also undertakes some additional support to callers which can involve making referrals directly to legal aid providers.

RoW also advise individuals on whether they are likely to meet the ECF criteria and how to make a direct application without the assistance of a legal aid provider. Individuals tend to approach them at an early or late stage in their process and repeat callers are not filtered out of their data. RoW conducts follow up calls to monitor the effectiveness of its service and receives calls from repeat callers.

RoW identified case studies of individuals who they had advised were eligible for legal aid but who had not managed to secure one despite significant efforts. This includes people who obtained ECF after applying directly for ECF on RoW’s advice but were unsuccessful in securing a lawyer. One individual made over 35 attempts at various points throughout her interaction with the service.

RoW also consider there has been an increase in the number of callers approaching them for advice about initial asylum claims, including advice on the asylum process, the evidential requirements for their claims, and what asylum support is available. Callers have been reliant on RoW’s advice line to help them complete Home Office Questionnaires. The Office of the Immigration Services Commissioner (OISC) takes the position that substantive advice on completing the questionnaire



can only be provided by regulated advisors<sup>23</sup>. This implies there is a significant risk of prejudice in completing this form without the assistance of a lawyer, which is the view of PLP's casework team. RoW is regulated by the Office of the Immigration Services Commissioner.

## Barristers' perspectives

Barristers' views on the fixed fee regime echo those of providers and they consider the work loss making.

Cross-subsidy is also necessary for barristers. Of the three we have spoken to so far, none are able to make a living solely from immigration legal aid work, with one prioritising certificated public and community care law and another also practicing family law. Two have taken on paid judicial roles whereas another relies on supplementary income from another venture.

Delays in billing, payment, and lack of payments on account mean that barristers can experience significant cash flow problems. This leaves barristers dependant on the ongoing financial health of legal aid providers to get paid. Having lost significant sums when law firms have gone under, one barrister said that she now limits the number of "at risk" cases she will take on "which has a chilling effect on the pursuit of much needed litigation".

LAA systems result in overpayments, with barristers unaware this has happened and then facing immediate claw back from the LAA. As recovering the overpayment takes precedence over any other fees owed, this can lead to barristers not receiving any legal aid income for months at a time.

Payment for pre-permission work on judicial review cases is contingent on getting a grant of permission.

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<sup>23</sup> <https://www.gov.uk/government/news/streamlined-asylum-processing-oisc-position>

# Conclusions

The experiences of immigration legal aid practitioners and of organisations who refer to them have highlighted common problems. These failings are structural and are not confined to one part of the country. The evidence is clear that legal aid fees are not enough to sustainably fund a legal aid practice and that individuals in dire situations are unable to get the support they need. Legal aid has not been made available for those individuals, despite their being a statutory duty to ensure that it is put in place.

Across each of the different procurement areas in England and Wales, immigration legal aid services are only made financially viable by grant funding from charitable trusts and foundations, cross-funding legal aid work from private earnings and the good will of hardworking individuals in the sector. Accordingly, the public service provided through immigration legal aid is heavily subsidised by private actors (legal aid providers, grant funders and individuals in practice who undertake unremunerated work).

As a result, providers struggle to recruit, develop, and retain staff. They do not have capacity to meet demand for their service and cannot increase their capacity. There is a risk that without immediate action, high quality legal aid funded immigration services will cease to exist outside of the limited capacity of the charity sector or firms who open a small number of matter starts at a loss, as a form of pro-bono activity or because it may bring in other work that is more sustainable.

Support organisations report, more often than not, being unable to place clients with a legal aid provider. They are forced to make impossible choices about which of their clients' problems are more severe and whose are in more urgent need of resolution. They encounter individuals who have, in desperation, paid for poor quality unregulated advice. Where there are concerns about the quality of advice received under legal aid, there is often no alternative legal aid provider to turn to.

When it comes to out-of-scope work relating to individuals' fundamental rights, referring organisations might not have a choice at all. Many providers have stopped accepting ECF work altogether because of the associated administrative burden. Some will only take it on where they have an existing relationship with a client. As a result, such clients are left either to pay private fees they can ill afford, or to solve legal problems on their own, often in the face of significant logistical and linguistic barriers.

The overall picture, therefore, is dire. The immigration legal aid sector at present simply cannot support all those who need, and are entitled to, help. It is no longer accurate to say that the immigration legal aid market is failing: it has failed. Advice deserts continue to grow. More and more providers give up on legal aid. **People who require legal aid, and those who provide it, are sinking in an ocean of unmet need.**

## Key Terms

**The Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO' or 'the Act'):** established the current legal aid scheme and came into force on the 1<sup>st</sup> of April 2013.

**The Section 1 duty:** under s.1 of the Act, the Lord Chancellor has a duty "to secure that legal aid is made available."

**The Legal Aid Agency ('LAA'):** established by the Lord Chancellor (under s.2(2)(c) of the Act) as an executive agency of the Ministry of Justice to award and administer legal aid.

**'In-scope' services:** Part 1, Schedule 1 of the Act defines a list of civil services which are expressly included as 'in scope' of legal aid. Legal aid for immigration is broadly restricted to asylum, detention, proceedings before the Special Immigration Appeals Commission, domestic violence, and trafficking issues, with the notable exclusion of applications relating to Article 8 ECHR.<sup>24</sup> The list was updated in 2019 to include services relating to Unaccompanied Asylum-Seeking Children.<sup>25</sup>

**Exceptional case funding ('ECF'):** s.10 of the Act provides for legal aid to be provided for civil services that are not 'in-scope' ('out-of-scope services') where an application is made for ECF. This can include applications where there is a breach (or risk of a breach) of the applicant's Convention rights or retained enforceable EU rights, such as applications based on Article 8 ECHR.

**Procurement area:** legal aid tendering is based on 'procurement areas.' This report describes providers' experiences in the following procurement areas: London and the South East; the North West; the South West; Wales; and the North East, Yorkshire and the Humber.

**Access points:** immigration and asylum procurement areas are split into smaller 'access points.' A provider's schedule authorisation will state the procurement area or access point in which they are required to maintain an office presence. Providers can only open 50% of their matter starts by post unless justified by Equality Act reasons.<sup>26</sup>

**Standard civil contract:** providers of face-to-face advice sign the '[Standard Civil Contract](#)' and an

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<sup>24</sup> Article 8 ECHR is the right to respect for private and family life. Human rights grounds can be advanced independently but are often pursued alongside Refugee Convention Grounds during the asylum process and will be considered at the same time. A successful Article 8 Claim on the basis that their removal would be a disproportionate interference with private and/or family life would usually result in a grant of discretionary leave on a 10-year route to settlement.

<sup>25</sup> The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019.

<sup>26</sup> 3.15 of the Specification (general rules set out in the Standard Civil Contract).

[individualised schedule](#) issued annually confirms the categories of law in which the provider can act, the location they provide services from and the number of controlled work ‘matter starts’ they can open during the schedule period.

**Licensed work:** some kinds of legal aid work are remunerated at hourly rates, and subject to standard costs and scope limits that are reviewed on application throughout the course of the case. Appeals and judicial review cases in the Upper Tribunal are covered by this category.<sup>27</sup>

**Controlled work:** other kinds of legal aid work are remunerated through fixed fees and subject to standard disbursement limits which providers must apply to extend before exceeding them. Initial advice, work relating to an asylum claim before a decision is taken by the Home Office and appeals to the First-tier Tribunal are covered by this category.<sup>28</sup>

**Escape Threshold:** where hours recorded on a controlled work matter exceed a threshold, it can ‘escape’ the fixed fee scheme and become payable at hourly rates. In the limited cases where controlled work is remunerated through hourly rates (e.g., asylum claims for unaccompanied children), they are subject to standard costs limits which providers must apply to extend before exceeding.<sup>29</sup>

**‘Legal Help’ or Stage 1 work:** a category of controlled work, short of representation in tribunal proceedings.

**Stage 2 work:** a category of controlled work, also known as ‘**controlled legal representation**’ covering representation in tribunal proceedings. Different fees apply based upon whether the matter proceeds to a substantive hearing.

**Office of the Immigration Services Commissioner (OISC):** a regulator of immigration advisers and organisations (solicitors and barristers are regulated by their professional bodies). Immigration and advice services are divided into three levels: OISC level 1 – advice and assistance; OISC level 2 – casework; and OISC level 3 – advocacy and representation. Registration with OISC is mandatory for those who are not legally qualified, and it is an offence to provide unregulated immigration advice.

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<sup>27</sup> The hourly rates for licensed work are set out in Part 3 of the Civil Legal Aid (Remuneration) Regulations (2013).

<sup>28</sup> The fixed fees for immigration and asylum work are specified in the tables in §3 of Part 1 of Schedule 1 of the *Civil Legal Aid (Remuneration) Regulations* (2013).

<sup>29</sup> The hourly rates for controlled work are set out in Part 2 of the Civil Legal Aid (Remuneration) Regulations (2013).

# Annex A: HMSC Detailed Statistics

## Referral statistics 01/12/2021 - 31/05/2022 (6 months)

### Main findings:

- HMSC was unable to place 38% of visitors over the period.
- Only 33% of the cases were placed with legal aid solicitors who do not have a formal referral pathway with HMSC, i.e. via a normal referral process.
- 22% of the cases that went via a normal referral process ended up with pro-bono solicitors, charities, or private solicitors, who often need to cover for the lack of legal aid providers.
- Only 4.1% of 864 attempted referrals to legal aid providers were successful. If you exclude those legal aid providers who already have a formal relationship with HMSC, only 2.8% of attempted referrals to non-partner legal aid providers were successful.
- The average waiting time to find a solicitor as of 31/05/22 was over 20 weeks (it is in fact more because it does not include the weeks past this date, when many visitors will still be waiting). Nearly 20% of visitors waited over 40 weeks to find a solicitor.

The figures below are as of 31/05/2022. They include all visitors who have had referrals to immigration lawyers on their behalf between 01/12/2021 and 31/05/2022.

- Total number of cases: 93 cases (visitors)
- Types of applications:
  - Art 8: 55%
  - Asylum: 14%
  - EUSS: 9%
  - DL (art 3, trafficking): 8%
  - Other: 13%
- Referred to 55 different organisations/firms, including 43 legal aid providers.

- Outcome:
  - 11 cases (12%) placed *directly* with a partner (within a referral partnership). 90% of these cases were article 8 applications.
  - 47 cases (51%) went through a *referral process* and were placed.
  - 16 of those 47 cases ended up with a referral partner, after having been on our list for a while.
  - 35 cases (38%) were *not* placed as of 31/05/2022, despite many attempts.

**If we exclude the 11 cases placed directly with a partner with whom we have a referral partnership, we attempted to place 82 cases (visitors). All the statistics below relate to these 82 visitors.**

### Number of referral attempts:

- Number of referral attempts for all visitors: 910. That is an average of **11 attempts per visitor**.
- 95% were to **legal aid providers (864 referrals)**.
- In addition, we sent 54 generic referral requests (i.e. asking solicitors if they have capacity).

### Cases taken on by a solicitor

**Out of the 82 cases, 47 were taken on by a solicitor within the 6-month period (57%).** Types of applications placed with a solicitor:

- Art 8: 43%
- EUSS: 18%
- Asylum: 14%
- DL (art 3, trafficking): 6%
- Other: 20%

Therefore, it took 910 referrals to place 47 people, i.e., 19.8 referrals in average per successful case. Only 5% of our total number of referral attempts were successful.

### Who took the cases on?

- Pro-bono: 4 cases
- Charity: 4 cases (Ramfel and Aire Centre, who do not hold legal aid contracts).
- Private solicitor: 2 cases

- Legal aid solicitors: 36 cases

Not all cases are taken on by legal aid solicitors. **10 cases (22%) were placed with pro-bono solicitors, charities, or private solicitors**, despite attempts made most of the time to legal aid solicitors as well.

**Legal aid solicitors took 36 cases**, including 12 cases taken by solicitors with whom we have a partnership and who ended up taking the case, after many attempts to refer elsewhere.

Considering that we attempted 864 referrals to legal aid providers, it means that **only 4.1% of referrals to legal aid providers were successful**. If you exclude those legal aid providers who already have a relationship with HMSC, **only 2.8% of referrals to non-partner legal aid providers were successful**.

## Visitors NOT taken on by any solicitor

Out of the 82 cases, **we did not manage to place 35 visitors (43%), despite 622 referral attempts for these visitors** – so 622 referral attempts were totally wasted time for our charity. Most of these referrals (597) were sent to legal aid providers.

Types of applications for these cases not taken on:

- Art 8: 62%
- Asylum: 16%
- DL (art 3, trafficking): 13%
- Other: 9%

## Waiting times

Looking at the group of 82 visitors, the average waiting time to find a solicitor as of 31/05/22 was 20.35 weeks. Around 40% of visitors had been waiting more than 20 weeks.

- 23% under 5 weeks (5 visitors)
- 17% between 5 and 9 weeks (13 visitors)
- 21% between 10 and 19 weeks (17 visitors)
- 21% between 20 and 39 weeks (17 visitors)
- 18% over 40 weeks (15 visitors)

For the cases that had not been placed as of 31/05/22 (35 cases), the average waiting time was

30 weeks – with more weeks to come. 13 of those 35 visitors (37%) had been waiting for more than 40 weeks.

8 visitors who were not placed anywhere wanted to claim asylum. Their waiting time at the end of the period (31/05/22) was 18 weeks on average.

## Referral statistics – 01/08/2022 – 31/01/2023 (6 months)

### Main findings:

- The figures have generally worsened compared to the previous period.
- HMSC was unable to place 58% of visitors over the period (38% previously).
- Only 15% of the cases were placed with legal aid solicitors who do not have a formal referral pathway<sup>30</sup> with HMSC, i.e., via a normal referral process (33% previously).
- 19% of the cases who went via a normal referral process ended up with pro-bono solicitors, charities, or private solicitors, who often need to cover for the lack of legal aid providers (22% previously).
- Only 5.9% of 309 attempted referrals to legal aid providers were successful (4.1% previously).
- For the cases that had not been placed as of 31/01/23 (46 cases), the average waiting time to find a solicitor was over 47 weeks (against 30 weeks in the previous period) – with more weeks to come.

Since our previous report (on data between 1<sup>st</sup> Dec 2021 and 31 May 2022), we have reduced the number of referral attempts for two reasons (339 attempts against 910 previously).

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<sup>30</sup> HMSC has managed to put in place a few referral partnerships, to place cases more easily. These include Cardinal Hume Centre, Islington Law Centre and previously Ramfel.



- making referrals is time consuming: identifying suitable providers, writing case summaries, drafting the referral, chasing up, updating our case management system, etc.
- very few referrals are successful.

Instead, we have concentrated on:

- developing individual relationships with legal aid solicitors, which also involves personal connections (which an individual visitor, not registered with a charity, would never have).
- establishing formal referral partnerships with other organisations and charities, some of which do not even have a legal aid contract (e.g. Ramfel).
- sending generic emails to firms of solicitors, asking if they have capacity - this is much quicker than sending individual referrals but cannot be captured in our case management system as accurately.

## Statistics

- Total number of visitors: 80.
- 34 cases were placed (43%)
- 14 with charities, pro bono, or private solicitors (17%)
- 11 directly placed with legal aid solicitors with whom HMSC has a partnership.
- Only 12 cases out of 80 (15%) placed with legal aid solicitors via a normal referral process.
- 46 never placed (58%)
- 339 referral attempts, including 303 to legal aid solicitors.
- 47 generic emails to solicitors to ask if they have capacity.

## HMSC's conclusions

The issues experienced by our visitors over this period are similar, with a majority of Article 8 matters (57% of cases, against 55% previously), and an increase in asylum matters (23% of cases, against 14% previously).

In general, we note that it is still extremely hard to place cases. Straightforward Article 8 cases are easier to place, because we have partnerships in place (e.g. with Cardinal Hume Centre). We struggle to place even first asylum cases.

The most difficult cases to place are complex Art 8 applications (e.g. based on very significant obstacles to reintegration), discretionary leave (e.g. Art 3), and entry clearance for children abroad to join family members in the United Kingdom (it has been years since we successfully placed one of these cases).

Generally, HMSC applies for ECF for visitors (66 ECFs granted in FY 21-22 and 34 ECFs granted in FY 22-23). They are nearly always granted. A few providers prefer to apply themselves but it is quite rare. We have a small team of legal support volunteers who make the applications under our supervision.

## Impact of withdrawal of a firm from legal aid on HMSC

In January 2023, a London firm lost their supervising solicitor for legal aid, who left the firm. The firm subsequently stopped taking on legal aid immigration matters. HMSC had several visitors with cases at the firm:

- Two had been placed a few weeks before, subject to HMSC assisting with ECF applications, which we had started to prepare. They came back to HMSC and were still on our referral list as of 13 April 2023.
- Another visitor nearly missed an appeal deadline. The firm had made an application for leave to remain which had been refused. An appeal to the FTT was due to be heard at the beginning of Feb 23. The firm informed us that they could not represent her anymore. They said, "We have tried to find Ms xx alternative representation but have not yet been successful". The case came back to HMSC and luckily, we managed to find another rep just in time.
- The solicitor who left also kindly took the case of another vulnerable visitor with her, to her new firm.

# Annex B: Literature review

We have conducted a literature review, as we are aware that there have been many inquiries by academic researchers and parliamentarians since the introduction of the Act. We have identified the following:

## Research reports

### University of Warwick, [‘The State of the Sector: The impact of cuts to legal aid on practitioners and their clients’](#) (2013)

Examined how LASPO impacted the legal aid sector a year after its introduction through a survey of 674 individuals currently working in legal aid funded civil law. Whilst most respondents identified as working in the not-for-profit sector, a significant number currently worked in private practice. Almost one third of respondents (194 individuals) reported that they were at risk of redundancy because of the funding cuts. The report explored these redundancy risks, and examined the impact on the availability of people who met the Supervisor standard for immigration and asylum law (see pages 18 and 31).

[This has since proven an acute issue in the South West procurement area, where one provider (Wiltshire Law Centre) has been unable to recruit a supervisor since 2018<sup>31</sup>.]

### Jo Wilding, [‘Droughts and deserts: A report on the immigration legal aid market’](#) (2019)

A supply side study of the immigration legal aid market in England and Wales carried out through a three-year period between 2016 and 2018. It was based on interviews with providers and concluded that, contrary to LASPO Post-Implementation Review conclusion, a situation of ‘market failure’ had developed in immigration legal aid and explored the reasons.

### Young Legal Aid Lawyers, [‘A Sector at Breaking Point: Justice Denied for Victims of Trafficking’](#) (2020)

A rapid consultation with the anti-slavery support sector about the state of access to justice for victims of trafficking. YLAL’s survey was open for responses 15-17 June 2020. Despite being live for fewer than three days, it received 34 responses from individuals working in at least 18 organisations. 70.6% of respondents stated that it was either ‘impossible’ (2.9%), ‘extremely difficult’ (20.6%) or ‘difficult’ (47.1%) to find legal aid representation for victims of trafficking.

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<sup>31</sup> ‘No access to justice: How legal advice deserts fail refugees, migrants and our communities’, May 2022, Refugee Action/Jo Wilding, p 196.

44.1% of respondents stated that victims of trafficking had left their service before they were able to find them an immigration representative.

It concluded that victims of trafficking were incurring debt and returning to exploitation to pay for private immigration representation due to legal aid providers being unavailable. The report outlined a prima facie breach of the government's duties to ensure access to legally aided asylum and immigration representation for victims of trafficking under the Council of Europe Convention on Action against Trafficking in Human Beings ('ECAT') and the EU Trafficking Directive.

### **Bar Council, '[Running on empty: Civil legal aid research report](#)' (2021)**

A report based on 16 interviews with civil legal aid barristers and clerks in 2020 which found that barristers have needed to take on increased case volumes to compensate for the reduction in fees, leading to a stressful and last-minute working culture. It described work as unsustainable for those coming in at the junior end, and there were problems with retention and career development, particularly from those without independent financial means.

There were real concerns among practitioners relating to sustainability at the junior end in relation to: recruitment and retention, social mobility, burnout resulting from years of financial stress and emotional pressure, training, securing pupillage then tenancy at the Bar, and then taking on a heavy caseload often necessitating considerable travel and out-of-pocket expenses to build a practice. It also expressed concerns that there were greater impacts on women and people from minority ethnic backgrounds and that diversity trends were 'going backwards.'

### **Jo Wilding, Maureen Mguni and Travis Van Isacker, Justice Together, '[A huge gulf: Demand and supply for immigration legal advice in London](#)' (2021)**

This report examined demand and supply for immigration advice in London, which had 40 per cent of the offices holding legal aid contracts in England and Wales, and more than half of the offices which were registered with the Office of the Immigration Services Commissioner to offer non-fee charging services at the highest level of advice and casework. It found a very large gap with actual capacity and a bottleneck between advice and casework:

- The report estimated a total sector capacity for approximately 10,000 immigration and asylum 'matters' per year (though one client may amount to more than one matter).
- Further, it estimated additional capacity for 700 higher court matters.
- It estimated that there was caseworker capacity for 4,000-5,000 pieces of casework.

- The report estimated total demand for immigration and asylum legal aid services to be in the hundreds of thousands.

Therefore, the report estimated demand for immigration and asylum legal aid services to be much higher than total supply. To meet the gap, capacity in the sector would need to grow tenfold; however, the report documented that the sector was unable to increase its capacity to meet demand because it faced a recruitment crisis for qualified caseworkers at all levels of provision, including legal aid, across England and Wales, including in London.

### **Jo Wilding, 'The Legal Aid Market' (2021), Policy Press: Bristol**

A book which explored Dr. Wilding's earlier research in more depth. It explained that financial viability was difficult to reconcile with quality in the current fee and audit regimes, meaning that providers must carefully mediate demand and supply to ensure their own survival, such that quality could only be maintained at the expense of client access (page 59). It identified five main threats to financial viability in market-based LA system:

1. The fixed-fee scheme caused significant financial losses.
2. A great deal of financial risk was placed on practitioners.
3. Delays or lag between doing the work and getting paid caused severe cash-flow difficulties.
4. The transaction costs of doing legal aid work were too high and had not been factored into the price paid for the work.
5. Economies of scale were not available or had already been maximised before the fixed-fee scheme was implemented.

The book plotted four types of demand on two axes: potential client demand vs. demand currently realised in cases and value demand vs. failure demand. It showed that there was a spectrum of providers, from those who are the most demand-responsive to those who are the most incentive-responsive and argued that aligning incentives with in-case demand would create less conflict between financial viability and meeting in-case demand, allowing demand responsive providers to be financially viable.

Dr. Wilding explored the role of survival strategies for providers to make legally aided work financially viable, e.g. subsidising legal aid work and reducing the amount of legal aid work they do. These strategies effectively reduced their responsiveness to potential-client demand to maintain responsiveness to in-case demand, thereby reducing client access. This created advice droughts, where there appeared to be LA provision, but in practice it was unavailable to potential clients because the capacity of providers was limited because of these survival strategies (p123).

## Law Society '[Civil legal aid: a review of its sustainability and the challenges to its viability](#)' (2021)

A report which examined (Section 7, p 19–20) Ministry of Justice statistics on numbers of providers, controlled work claims and Home Office statistics on asylum claims. It concluded that the numbers did not reflect recent increases in asylum claims which could be indicative of a reduction in the proportion of asylum applicants receiving legal advice. However, it also concluded that provider numbers had not significantly declined during the decade since the introduction of the Act (but this could conceal a reduction in quality).

## Law Society, '[Legal Aid Deserts](#)' (since 2021), annual campaign

A data visualisation project repeated over several years comparing published LAA data on numbers of providers in each local authority area with ONS data on population levels. The 2023 update concluded that 39m people did not have access to a local provider and numbers of providers had declined 8.5% since April 2022.

## Legal Aid Practitioner's Group, '[Legal Aid Census](#)' (2022)

The 2021 Legal Aid Census was devised by independent academics from Glasgow School of Law and Cardiff University and published by the Legal Aid Practitioners Group. They examined practitioner perspectives of working in the legal aid sector. The Census concluded that a lack of investment had caused significant issues including:

- Considerable barriers for those seeking to enter the profession – from limited training opportunities to high levels of student debt that cannot be serviced by low salaries – which were creating a recruitment crisis across the sector
- Difficulties in retaining staff due to low salaries, a lack of career progression and a range of issues impacting adversely on staff wellbeing
- Fixed fees and hourly rates were too low and failed to reflect the complexity of the work, the vulnerabilities of clients, and the time taken to provide the services that clients require, leading practitioners to do unpaid work, work far longer than they were remunerated for and limiting the type of cases they take on.

It also provided the following immigration specific statistics:

- 50 of 55 immigration practitioners surveyed reported working for periods longer than they were remunerated for.
- Of 33 immigration practitioners surveyed, the median number of hours taken to be paid for one hour's work was 2.2 hours.
- 91 of 100 immigration practitioners stated that they did not consider the fixed fee regime as sustainable.
- 74 of 109 (69.8%) of immigration practitioners stated they did not consider the hourly rates regime sustainable.
- 31 of 57 immigration practitioners carried out work that they did not claim for with the LAA (more than every other contract area except clinical negligence).
- Six barristers chambers (21.4%) surveyed found it challenging to accept instructions challenges relating to immigration and asylum.

**Refugee Action, Justice Together Initiative and Jo Wilding: '[No access to justice: How legal advice deserts fail refugees, migrants and our communities](#)' (2022);**

This report examined the demand and supply of legal aid and low-cost advice across the UK through published statistics, FOIA requests, survey responses interviews and workshop sessions with stakeholders. It found that:

- Provision in England and Wales was not even adequate for first time asylum applicants. There were 6,000 more new asylum applications and appeals than there were new legal aid matter starts.
- The majority of providers who responded to the survey did not have capacity to open more matters despite having spare 'matter starts', indicating that available matters starts do not indicate additional capacity.
- Comparing 'primary legal need' (for main categories of 'in scope' work) with 'primary legal aid provision' to give a quantitative deficit or surplus for each region showed a primary legal aid deficit in every region of England, except for London where there was a very small surplus.

- Remote advice was not a viable solution to the severe shortage of advice as there was no significant surplus to be redeployed.

[This report complemented the earlier Justice Together Initiative funded report. It concluded that there was a small surplus of 'primary legal aid provision'. However, this failed to take account of the context set out in the earlier 'Huge Gulf' report of the London provision also having to meet demand from surrounding areas that have inadequate provision. This report also highlighted a deficit in the South East outside of London (which forms part of the same procurement area).

The conclusion was also troubling because primary legal aid provision also excludes ECF, for which there is significant demand and high grant rates, and the provision of which is intended to represent a safeguard against breaches of fundamental rights. It also did not take into account the significant concerns of NGOs such as HMSC about the quality of advice provided by some providers. However, these concerns are difficult to evidence and concerns that the Lord Chancellor had failed to adequately set and monitor standards were considered in the context of the DDAS [R \(oao Detention Action\) v Lord Chancellor \[2022\] EWHC 18 \(Admin\), but not found to mount the high evidential threshold of giving rise to a practical impediment to accessing justice.](#)]

### **Public Law Project and Young Legal Aid Lawyers, '[Overstretched & unsustainable: a case study of the immigration and asylum legal aid sector](#)' (2023)**

A joint report based on online surveys, semi-structured interviews with junior practitioners and focus groups with practitioners, charities in the sector and people with lived experience. It found that:

- 73% of survey respondents did unseen or unbillable work every working day.
- Practitioners were routinely working over their contracted hours and finding it difficult to take leave. A majority of interviewees and survey respondents expressed a strong feeling that they were always working either at or beyond their capacity.
- Training and development was limited and supervisors were stretched with their own caseloads.
- The majority of survey respondents expressed a strong preference for hourly rates over fixed fees, saying that they were a more 'realistic' and 'fairer' way of being remunerated for legally aided work.
- 70% of survey respondents had experienced vicarious trauma or 'burnout' from their practice.



- The interaction of the legal aid regime with backlogs in Home Office decision-making was one of the reasons it was difficult to make a legal aid practice financially sustainable.
- The primary obstacle for those who had lived experience of trying to secure legal advice and representation was finding a legal aid provider to take them on, which could take many months.
- When asked what they saw as the most likely scenario in the next five years, 24% said they anticipated taking on more immigration and asylum legal aid work and 30% said they anticipated continuing to work in immigration and asylum legal aid practice to the same extent as they did at present. 14% said they would take on less immigration and asylum legal aid work and 19% said they anticipated either leaving immigration and asylum legal aid practice or legal aid practice entirely.

## Parliamentary inquiries

### Justice Select Committee, '[The Future of Legal Aid](#)' (2021)

This cross-party committee expressed concerns about the MoJ's internal review of sustainability (see explainer), and concluded 'radical change' and a 'complete overhaul of the system' was required, recommending that the Government:

- take steps to establish the levels of legal need
- fund more training opportunities for lawyers.
- provide direct grants to organisations under s.2(2) of LASPO
- set up more duty schemes
- ensure fees are updated regularly in line with inflation.

The Government [response](#) hinted at a future review of civil legal aid and an early advice project which did not cover immigration and which has been heavily criticised.<sup>32</sup>

### Westminster Commission on Legal Aid, '[Inquiry into the sustainability and recovery of the sector](#)' (2021)

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<sup>32</sup> [Legal Action Group | Missing the point? \(lag.org.uk\)](#)

A cross-party commission which highlighted sustainability concerns, citing Jawaid Luqmani (of Luqmani Thompson, an immigration provider) who considered immigration legal aid rates unsustainable and Jo Wilding's 2021 'A Huge Gulf' report (see [above](#)) on capacity and demand issues in London. Recommended that the Government:

- increase rates with inflation, using 2011 as a baseline.
- set up an independent pay review panel.
- urgently and independently review the scope of legal aid.
- restore legal aid for early advice to pre-LASPO position.
- develop robust mechanisms for measuring legal need.
- ensure legal aid is paid for all judicial review cases,
- overhaul the ECF scheme.

## **Ministry of Justice, 'Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012' (2019)**

The Ministry of Justice carried out a post-implementation review ('PIR') of Part 1 of LASPO to assess whether LASPO had delivered on its aim of "delivering significant savings to the cost of the scheme by focusing legal aid on the highest priority cases." The Ministry of Justice published the PIR following consultation with stakeholders through roundtables and written submissions, including from Public Law Project.<sup>33</sup>

It was published alongside a 'Legal Support Action Plan' which set out how the Government would make changes to the legal aid scheme following the PIR.

The PIR found that LASPO had been successful in targeting legal aid at asylum cases, which the Government had deemed the highest priority within immigration law. It also found that LASPO provided inadequate protection for unaccompanied asylum-seeking children, so the list of in-scope services was updated to include additional services for such cases.<sup>34</sup>

The PIR accepted that the 25% reduction in expenditure on civil legal aid services had resulted in a

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<sup>33</sup> Public Law Project (2018) Submission to the Post-Implementation Review of the Legal Aid Sentencing and Punishment of Offenders Act 2012. Available at:

<https://publiclawproject.org.uk/content/uploads/2018/09/LASPO-PIR-SUBMISSION-PLP.pdf>

<sup>34</sup> By the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019.

32% reduction in the number of providers offering such services; however, the PIR maintained that civil legal aid market could sustain a sufficient number of providers.

The Ministry of Justice also published a PIR for Part 2 of LASPO, which assessed how LASPO had reduced civil litigation costs and is not relevant for the purposes of this report.